



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R08-UST-2018-0729; FRL-9991-41-Region 8]

Colorado; Final Approval of State Underground Storage Tank Program Revisions and Codification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Colorado's Underground Storage Tank (UST) Program submitted by the State. The EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies the EPA's approval of Colorado's State program and incorporates by reference those provisions of the State's regulations that we have determined meet the requirements for approval. The State's federally authorized and codified UST program, as revised pursuant to this action, will remain subject to the EPA's inspection and enforcement authorities under Sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless the EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by

reference of certain publications listed in the regulations is approved by the Director of the **Federal Register**, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments.
2. Email: Hendrix.Mark@epa.gov.
3. Mail: Mark Hendrix, Region 8, Project Officer, UST, Solid Waste and PCB Unit, Resource Conservation and Recovery Program, Office of Partnerships and Regulatory Assistance (Mail Code: 8P-R), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
4. Hand Delivery or Courier: Deliver your comments to Mark Hendrix, Region 8, Project Officer, UST, Solid Waste and PCB Unit, Resource Conservation and Recovery Program, Office of Partnerships and Regulatory Assistance (Mail Code: 8P-R), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

Instructions: Direct your comments to Docket ID No. EPA-R08-UST-2018-0729. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or email. The Federal <https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact

information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this action and associated publicly available materials from 8:30 a.m. to 4:00 p.m., Monday through Friday, at the following location: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, phone number (303) 312-6561. Interested persons wanting to examine these documents should make an appointment with the office at least 2 days in advance.

FOR FURTHER INFORMATION CONTACT: Mark Hendrix, (303) 312-6561, Hendrix.Mark@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mark Hendrix at (303) 312-6561.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Colorado's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States that have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal underground storage tank

program. When the EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by the EPA.

B. What decisions has the EPA made in this rule?

On July 6, 2018, in accordance with 40 CFR 281.51(a), Colorado submitted a complete program revision application seeking the EPA's approval of Colorado's revisions corresponding to the EPA final rule published on July 15, 2015, (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State application contains the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. We have reviewed the State application and determined that the revisions to Colorado's UST program are equivalent to, consistent with, and no less stringent than, the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Colorado program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Colorado final approval to operate its UST program with the changes described in the program revision application and as outlined below in Section I.G of this document.

C. What is the effect of this action on the regulated community?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of Colorado, and are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment. Colorado did not receive any comments during its comment period when the rules and regulations being considered were proposed at the State level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is publishing a separate document in the “Proposed Rules” section of this **Federal Register** that serves as the proposal to approve the State’s UST program revisions and provides an opportunity for public comment. If the EPA receives comments that oppose this approval, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. The EPA will base any further decision on approval of the State application on the proposal to approve after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Colorado previously been approved?

On April 23, 2007, the EPA finalized a rule approving the UST program that Colorado proposed to administer in lieu of the Federal UST program. The State’s program has not previously been codified.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each state program application must meet the general requirements in 40 CFR 281.11, and specific requirements in the following subparts of 40 CFR part 281: subpart B (Components of a Program Application); subpart C (Criteria for No Less Stringent); and subpart D (Adequate Enforcement of Compliance). This also is true for proposed revisions to approved state programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the Federal UST program and because the EPA has confirmed that the Colorado UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D after this approval.

The Colorado Department of Labor and Employment, Division of Oil and Public Safety (Department) is the lead implementing agency for the UST program in Colorado, except in Indian country.

The Department continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under Colorado Revised Statutes (C.R.S.) (2018), Title 8 Labor and Industry, Article 20 Fuel Products, selected provisions from Sections 8-20-101, *et seq.* and Article 20.5 Petroleum Storage Tanks, Sections 8-20.5-101, *et seq.* The Colorado UST Program enforcement authority arises from the powers and duties granted to the Department Director (Director), which grants are found in C.R.S. Sections 8-20-102(1), 8-20-104, 8-20-209(1), 8-20.5-107, 8-20.5-202(1), 8-20.5-208(4) and 8-20.5-209. C.R.S. Sections 8-20-104 and 8-20.5-107 provide the Director with broad enforcement

authority. Under C.R.S. Section 8-20-209(1), any duly authorized agent or employee of the Division of Oil and Public Safety has the authority to enter an UST facility during regular business hours for inspections. In the case of a release, C.R.S. Section 8-20.5-208(4) provides the Director the authority to take such action as necessary, including the authority to enter any property, premises, or place where an UST is located for inspection, to conduct monitoring and testing, and to require an owner to furnish records, conduct monitoring or testing and provide access to tanks. C.R.S. Sections 8-20-228 and 8-20.5-209 provide the Director with specific corrective action authority. Notices of violation may be issued, and penalties for non-compliance with Colorado's UST Act may be assessed under C.R.S. Section 8-20.5-107. A delivery prohibition tag may be placed on each tank that has been determined to meet any of the criteria for delivery prohibition as described in 7 Code of Colorado Regulations 1101-14, Section 6-2-1.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases are found under C.R.S. Section 8-20-228, 8-20.5-102(1) and (2), and Title 8, Article 20.5, Part 2 Underground Storage Tanks, in addition to the regulatory provisions of 7 CCR 1101-14, Article 2, Underground Storage Tanks, as amended effective May 1, 2018; Reporting and recordkeeping requirements are found under 7 CCR 1101-14, Section 2-3-7. The aforementioned statutory and regulations sections satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Colorado and the EPA, signed by the EPA Region 8 Regional Administrator on February 13, 2018, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42, including: the provision that the State will not oppose intervention

under Rule 24 of the Colorado Rules of Civil Procedure for Courts of Record in Colorado on the grounds that the applicant's interest is adequately represented by the State; and the right of aggrieved parties to be admitted as party to agency proceedings under C.R.S. Title 24, Article 4, Part 1, Section 24-4-105(2)(c). Colorado has met the public participation requirements found in 40 CFR 281.42.

To qualify for final approval, revisions to a state's program must be "equivalent to, consistent with, and no less stringent" than the 2015 Federal Revisions. In the 2015 Federal Revisions the EPA addressed UST systems deferred in the 1988 UST regulations and added, among other things, new operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems.

The EPA analyzes revisions to approved state programs pursuant to the criteria enumerated in 40 CFR 281.30 through 281.39, and has concluded that the Department has revised its regulations to help ensure that the State's UST program continues to be equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the Department has amended the Code of Colorado Regulations to incorporate the revised requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions. The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Title 40 CFR 281.39 describes the state operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than Federal

requirements. Colorado has promulgated and is implementing its own operator training provisions under Code of Colorado Regulations 7 CCR 1101-14 Section 2-3-1, *et seq.* After a thorough review, the EPA has determined that Colorado's operator training requirements are equivalent to, consistent with, and no less stringent than Federal requirements.

As part of the State Application, the Colorado Attorney General certified that the State revisions meet the "equivalent to, consistent with, and no less stringent" criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

For further information on the EPA's analysis of the State's application, see the chart in the Technical Support Document (TSD) contained in the docket for this rulemaking.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally approved program and are not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following regulatory requirements are considered broader in coverage than the Federal program, as these State-only regulations are not required by Federal regulation and are implemented by the State in addition to the federally approved program:

7 Code of Colorado Regulations (CCR) 1101-14, Section 1-5 Definitions "motor fuel" because, and to the extent that the State includes fuel products not restricted to use as fuel in UST systems.

7 CCR 1101-14, Sections 2-2-3(a) and 2-2-3(j) are broader in scope because fees are not imposed by the Federal program.

7 CCR 1101-14, Section 2-3-7(d) is broader in scope because the State requires extra documentation and recordkeeping to support the reimbursement of funds from the State Petroleum Storage Tank fund.

More Stringent Provisions

Where an approved state program includes requirements that are considered more stringent than required by Federal law, the more stringent requirements become part of the federally approved and enforceable program (40 CFR 281.12(a)(3)(i)).

The following regulatory requirements are considered more stringent than the Federal program, and on approval, they become part of the federally approved program and are federally enforceable:

Under 7 Code of Colorado Regulations (CCR) 1101-14:

At Section 1-5, definition of “replace” and 2-2-1(b) introductory paragraph, third sentence, Colorado has a shorter threshold for the length of piping that triggers a designation of replacement than the Federal program.

At Section 2-2-1(c)(1)(ii), Colorado maintains more restrictive overfill prevention equipment requirements than the Federal program.

At Sections 2-2-2-3(a), 2-3-6-2(a)(1) and (2), and 2-3-6-2(a)(7) and (c), Colorado has State-only inspection requirements that are additional to those found in the Federal program.

At Sections 2-2-1(d)(1), introductory paragraph – (d)(1)(iii), the State has additional criteria for defining new dispenser systems, which would regulate as new more types of dispenser systems than Federal.

At Sections 2-2-3(a) and (b), Colorado has an additional State-only annual tank registration requirement.

At Sections 2-3-7(b)(9), 2-4-3(e), 4-1(a) and (e), and in the lack of a State analog to Federal §280.50(b)(1), Colorado maintains reporting requirements additional to those found in the Federal program.

Colorado does not have an analog to the Federal recordkeeping timeline requirement found at §280.45(b)(1) and (3); therefore, the State requirement for maintaining the records until the UST system is permanently closed or undergoes a change in service must be observed, which is more stringent than the 3 years required under the Federal program for these types of records.

At Sections 2-4-1(a), (f), and (g), 2-4-3(a) – (c), and due to the lack of a State analog to the last sentence of §280.70(a) and the exception to the spill and overfill requirements at §280.70(c), the Colorado program sets forth additional requirements relative to the State's temporary tank closure requirements that are not found in the Federal regulations.

At Section 2-3-1-6(c), Colorado has additional requirements for the identification and designation of Class A and B operators.

At Section 7-3(d)(2)(i), the State has an additional filing option for the required financial responsibility filing and a shorter timeline under which the filing must take place than the Federal program.

I. How does this action affect Indian country (18 U.S.C. 1151) in Colorado?

The EPA's approval of Colorado's program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes all lands within the exterior boundaries of the following Indian reservations located within Colorado: the Ute Mountain Ute and Southern Ute Indian Reservations; any land held in trust by the United States for an Indian tribe; and any other areas that are "Indian country" within the meaning of 18 U.S.C. 1151. Any lands removed from an Indian reservation status by Federal court action are not considered reservation lands

even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the State's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, authorizes the EPA to approve state UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the federally approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Colorado's UST program?

The EPA has not previously incorporated by reference and codified Colorado's approved UST program. Through this action, the EPA is incorporating by reference and codifying Colorado's State program in 40 CFR 282.55 to include the program and the approved revisions.

C. What codification decisions have we made in this rule?

In this rule we are finalizing the Federal regulatory text that incorporates by reference the federally authorized Colorado UST program. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Colorado rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make,

these documents generally available through <https://www.regulations.gov> and/or in hard copy at the EPA Region 8 office (see the **ADDRESSES** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Colorado's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the Colorado UST program addressed in this direct final rule become final. If, however, the EPA receives substantive comment on the proposed rule, then this codification will not take effect, and the State rules that are approved after the EPA considers public comment will be codified instead. By codifying the approved Colorado program and by amending the Code of Federal Regulations (CFR), the public will more easily be able to discern the status of the federally approved requirements of the Colorado program.

The EPA is incorporating by reference the Colorado approved UST program in 40 CFR 282.55. Section 282.55(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's regulations.

Section 282.55 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of the EPA's codification of the federally authorized state UST program on enforcement?

The EPA retains the authority under sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Colorado, the EPA

will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the State analogs. Therefore, though the EPA has approved the State procedures listed in 40 CFR 282.55(d)(1)(ii), the EPA is not incorporating by reference Colorado's procedural and enforcement authorities.

E. What state provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved state program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in coverage" than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in coverage than the Federal program, those provisions are not a part of the federally approved program. As a result, state provisions which are "broader in coverage" than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Title 40 CFR 282.55(d)(1)(iii) lists for reference and clarity the Colorado statutory and regulatory provisions which are "broader in coverage" than the Federal program and which are not, therefore, part of the approved program being codified. Provisions that are "broader in coverage" cannot be enforced by EPA. The State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (EO) Reviews

This action only applies to Colorado's UST program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011). This action approves and codifies state requirements for the purpose of RCRA Section 9004 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Colorado's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132

(64 FR 43255, Aug. 10, 1999), because it merely approves and codifies state requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), the EPA grants a state’s application for approval as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves preexisting State rules which are at least equivalent to, consistent with, and no less stringent than existing Federal requirements and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of Sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Incorporation by reference, Hazardous substances, State program approval, Underground storage tanks.

Dated: April 29, 2019.

Debra Thomas,

Acting Regional Administrator,

EPA Region 8.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Add § 282.55 to read as follows:

§ 282.55 Colorado State-Administered Program.

(a) The State of Colorado is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Colorado Department of Environmental Quality (DEQ), Division of Environmental Response and Remediation (DERR), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA published the notice of final determination approving the Colorado underground storage tank base program effective on April 23, 2007. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) Colorado has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under Sections 9003(h), 9005, and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Colorado must revise its approved program to adopt new changes to the Federal Subtitle I program which make it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Colorado obtains

approval for the revised requirements pursuant to Section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart, and notice of any change will be published in the **Federal Register**.

(d) Colorado has final approval for the following elements of its program application originally submitted to the EPA and approved effective April 23, 2007, and the program revision application approved by the EPA effective on **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

(1) *State statutes and regulations--(i) Incorporation by reference.* The material cited in this paragraph (d)(1), and listed in appendix A to this part, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Colorado regulations and statutes that are incorporated by reference in this paragraph (d)(1) from Colorado's Secretary of State, 1700 Broadway, Denver, CO 80290; Attn: Code of Colorado Regulations and Administrative Rules; Phone number: (303) 894-2200 ext. 6418; e-mail: rules@sos.state.co.us; Website: <https://www.sos.state.co.us/CCR/Welcome.do>.

(A) "EPA-Approved Colorado Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program" dated February 2019.

(B) [Reserved]

(ii) *Legal basis.* The EPA evaluated the following statutes and regulations which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) The statutory provisions include:

(1) Colorado Revised Statutes (2018), Title 8 Labor and Industry, Article 20 Fuel Products: Sections 8-20-102(1), 8-20-104 except 8-20-104(4)(b) and (7), 8-20-209(1), 8-20-223.5(1) and (2), 8-20-228.

(2) Colorado Revised Statutes (2018), Title 8 Labor and Industry, Article 20.5 Petroleum Underground Storage Tanks: Sections 8-20.5-101, except (2), (10)(a)(III), (16) and references to aboveground storage tanks (ASTs); 8-20.5-102; 8-20.5-105; 8-20.5-106; 8-20.5-107; 8-20.5-202(1), (1.5), (2), (3), and (4); 8-20.5-203; 8-20.5-204; 8-20.5-205; 8-20.5-206; 8-20.5-208; and 8-20.5-209.

(3) Colorado Revised Statutes (2018), Title 24 Government – State Administration, Article 4 Rule-Making and Licensing Procedures by State Agencies: Section 24-4-105(2)(c).

(B) The regulatory provisions include:

(1) Code of Colorado Regulations (May 1, 2018), 7 CCR 1101-14 “Department of Labor and Employment, Division of Oil and Public Safety, Storage Tank Regulations,” Article 6 Enforcement: Section 6-1 Enforcement Program; Subsections 6-1-1 Notice of Violation; 6-1-2 Enforcement Order; 6-1-3 Informal Conference; Section 6-2 Underground Storage Tank Delivery Prohibition Subsections 6-2-1 Criteria for Delivery Prohibition; 6-2-2 Red Tag Mechanisms Used to Identify Ineligible USTs; 6-2-3 Notification Processes for UST Owners/Operators and Product Deliverers; 6-2-4 Reclassifying Ineligible USTs as Eligible to Receive Product; 6-2-5 Delivery Prohibition Deferral in Rural and Remote Areas; 6-2-6 Delivery Prohibition Deferral in Emergency Situations; 6-2-7 Removal of Red Tag from Emergency Generator Tank Systems.

(2) [Reserved]

(iii) *Provisions not incorporated by reference.* The following specifically identified statutes and rules applicable to the Colorado underground storage tank program that are broader in coverage than the Federal program, are not part of the approved program, and are not incorporated by reference in this part for enforcement purposes:

(A) *Code of Colorado Regulations (May 1, 2018), 7 CCR 1101-14 “Department of Labor and Employment, Division of Oil and Public Safety, Storage Tank Regulations”*: Sections 1-5 “motor fuel”; 2-2-3(a); 2-2-3(j); and 2-3-7(d).

(B) *Colorado Revised Statutes (2018), Title 8 Labor and Industry, Article 20 Fuel Products*: Sections 8-20-209(2), 8-20-212, 8-20-215, 8-20-218, 8-20-223.5(3), 8-20-230, and 8-20-231; Article 20.5 Petroleum Storage Tanks, Sections 8-20.5-102(3) and (4), and 8-20.5-207.

(2) *Statement of legal authority.* The Attorney General’s Statement, signed by the Attorney General of the State of Colorado Department of Law on December 7, 2001, and by the Assistant Attorney General on November 23, 2016, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on November 13, 2002, and as part of the program revision application on November 1, 2016, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on November 13, 2002, and as part of the program revision application on November 1, 2016, though not incorporated by reference, are referenced as part of

the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 8 and the Colorado Department of Labor and Employment, Division of Oil and Public Safety, signed by the EPA Regional Administrator on February 13, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding the entry for Colorado in alphabetical order by State to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Colorado

(a) The statutory provisions include: *Colorado Revised Statutes (2018), Title 8 Labor and Industry, Article 20.5 Petroleum Storage Tanks, Part 1 Administration: Section 8-20.5-101(16)* definition of “tank”.

(b) The regulatory provisions include:

(1) *Code of Colorado Regulations (May 1, 2018), 7 CCR 1101-14 “Department of Labor and Employment, Division of Oil and Public Safety, Storage Tank Regulations”:*

Article 1 General Provisions:

Section 1-5 Definitions, except “aboveground storage tank” (AST), “aboveground storage tank (AST) system,” “fire resistant tank,” “motor fuel,” the phrase “or above ground” in

the definition of “operator,” Item (3) in the definition of “owner” relative to ASTs, and paragraph relative to ASTs in the definition of “secondary containment”; 1-6 Glossary of Acronyms and Initializations;

Article 2 Underground Storage Tanks:

Section 2-1 UST Program Scope and Applicability; Subsections 2-1-1 Applicability; 2-1-2 Determination of ownership and use;

Section 2-2 UST Design, Construction, Installation and Registration; Subsections 2-2-1 Design and Performance standards for new and replaced UST systems; 2-2-2 Installation; 2-2-2-1 Installation Application; 2-2-2-2 Installation Requirements; 2-2-2-3 Installation Inspection; 2-2-3 UST System Registration; 2-2-4 Upgrading existing UST System; 2-2-5 Repairs;

Section 2-3 Operation; Subsections 2-3-1 Operator training; 2-3-1-1 Classes of Operators; 2-3-1-2 Class A Operator; 2-3-1-3 Class B Operator; 2-3-1-4 Class C Operator; 2-3-1-5 Acceptable Training and Certification Processes; 2-3-1-6 Training and Certification Deadlines and Schedules; 2-3-1-7 Retraining Requirements; 2-3-1-8 Documentation; 2-3-2 Spill and Overfill Prevention; 2-3-3 Corrosion Protection; 2-3-4 Release Detection; 2-3-4-1 General requirements for all UST systems; 2-3-4-2 Requirements for regulated substance UST Systems; 2-3-4-3 Requirements for Piping; 2-3-4-4 Requirements for hazardous substance UST systems; 2-3-5 Periodic testing of spill prevision equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment; 2-3-6 Compliance inspections; 2-3-6-1 Monthly Compliance Inspections; 2-3-6-2 Annual Operational Compliance Inspections; 2-3-6-3 Inspections Conducted by the Director; 2-3-7 Reporting and Record Keeping;

Section 2-4 Closure of UST Systems; Subsections 2-4-1 Temporary Closure; 2-4-2 Permanent Closure; 2-4-3 Site Assessment;

Section 2-5 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems; Subsections 2-5-1 Definitions; 2-5-2 General requirements; 2-5-3 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems;

Article 4 Release Identification And Reporting:

Sections 4-1 Suspected Releases; 4-2 Response to Suspected Releases; 4-3 Confirmed Releases;

Article 5 Release Response:

Section 5-1 Response to Confirmed Releases; Subsections 5-1-1 Acute human health hazards; 5-1-2 Chronic and secondary human health hazards and other environmental impacts; Section 5-2 Site Characterization;

Section 5-3 Corrective Action;

Section 5-4 No Further Action Request;

Article 7 Financial Responsibility Requirements For Owners/Operators Of Petroleum Underground Storage Tanks:

Section 7-1 Applicability;

Section 7-2 Financial Responsibility Mechanisms;

Section 7-3 Maintenance of Financial Responsibility.

(c) Copies of the Colorado statutes and regulations that are incorporated by reference are available from the following offices:

Statutes – Colorado Revisor of Statutes, 200 E. Colfax Avenue, Denver, CO 80203; Attn:
Office of Legislative Legal Services; Phone number: (303) 866-2045; Website:

<https://leg.colorado.gov/agencies/office-legislative-legal-services/colorado-revised-statutes>.

Regulations – Colorado's Secretary of State, 1700 Broadway, Denver, CO 80290; Attn:
Code of Colorado Regulations and Administrative Rules; Phone number: (303) 894-2200 ext.
6418; e-mail: rules@sos.state.co.us; Website: *<https://www.sos.state.co.us/CCR/Welcome.do>*.

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